



Regulations of the Ashburnham Board of Health Regarding the Sale and Distribution of Tobacco Products

A. Statement of Purpose:

Whereas there exists conclusive evidence that tobacco smoke causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose and throat; and whereas more than eighty percent of all smokers begin smoking before the age of eighteen years (Centers for Disease Control and Prevention, "Youth Surveillance - United States 2000," 50 MMWR 1 (Nov. 2000); and whereas nationally in 2000, sixty nine percent of middle school age children who smoke at least once a month were not asked to show proof of age when purchasing cigarettes (Id.); and whereas the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin; and whereas despite state laws prohibiting the sale of tobacco products to minors, access by minors to tobacco products is a major problem; now, therefore it is the intention of the **Ashburnham** Board of Health to curtail the access of tobacco products by minors.

B. Authority:

This regulation is promulgated pursuant to the authority granted to the **Ashburnham** Board of Health by Massachusetts General Laws Chapter 111, Section 31 that "Boards of Health may make reasonable health regulations"

C. Definitions:

For the purpose of this regulation, the following words shall have the following meanings:

Business Agent: An individual who has been designated by the owner or operator of any establishment to be the manager or otherwise in charge of said establishment.

Employee: Any individual who performs services for an employer.

Employer: Any individual, partnership, association, corporation, trust or other organized group of individuals, including **Ashburnham** or any agency thereof, which uses the services of one (1) or more employees.

Minor: Any individual who is under the age of eighteen (18).

Permit Holder: Any person engaged in the sale or distribution of tobacco products directly to consumers who applies for and receives a tobacco sales permit or any person who is required to apply for a tobacco sales permit pursuant to these regulations, or his or her business agent.

Person: An individual, employer, employee, retail store manager or owner, or the owner or operator of any establishment engaged in the sale or distribution of tobacco products directly to consumers.

Self Service Display: Any display from which customers may select a tobacco product without assistance from an employee or store personnel, excluding vending machines.

Tobacco Product: Cigarettes, cigars, chewing tobacco, pipe tobacco, bidis, snuff or tobacco in any of its forms.

Vending Machine: Any automated or mechanical self service device, which upon insertion of money, tokens or any other form of payment, dispenses cigarettes or any other tobacco product.

D. Tobacco Sales to Minors Prohibited:

1. No person shall sell tobacco products or permit tobacco products to be sold to a minor; or not being the minor's parent or legal guardian, give tobacco products to a minor.
2. In conformance with and in addition to Massachusetts General Law, Chapter 270, Section 7, a copy of Massachusetts General Laws, Chapter 270, Section 6, shall be posted conspicuously by the owner or other person in charge thereof in the shop or other place used to sell tobacco products at retail. The notice shall be provided by the Massachusetts Department of Public Health and made available from the **Ashburnham** Board of Health. The notice shall be at least 48 square inches and shall be posted conspicuously by the permit holder in the retail establishment or other place in such a manner so that it may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four (4) feet or greater than nine (9) feet from the floor.
3. Identification: Each person selling or distributing tobacco products shall verify the age of the purchaser by means of government-issued photographic identification containing the bearer's date of birth that the purchaser is 18 years old or older. Verification is required for any person under the age of 27.
4. All retail sales of tobacco must be face-to-face between the seller and the buyer.

E. Tobacco Sales Permit:

1. No person shall sell or otherwise distribute tobacco at retail within **Ashburnham** without first obtaining a tobacco sales permit issued annually by the **Ashburnham** Board of Health.
2. As part of the tobacco sales permit application process, the applicant will be provided with the **Ashburnham** Board of Health regulation. Each applicant is required to sign a statement declaring that the applicant has read said regulation and that the applicant is responsible for instructing any and all employees who will be responsible for tobacco sales regarding both state laws regarding the sale of tobacco and this regulation.
3. Each applicant is required to provide proof of a current tobacco sales license issued by the Massachusetts Department of Revenue before a tobacco sales permit can be issued.

4. The fee for a tobacco sales permit shall be determined by the **Ashburnham** Board of Health annually. All such permits shall be renewed annually by October 31.
5. A separate permit is required for each retail establishment selling tobacco.
6. Each tobacco sales permit shall be displayed at the retail establishment in a conspicuous place.
7. No tobacco sales permit holder shall allow any employee to sell cigarettes or other tobacco products until such employee reads this regulation and state laws regarding the sale of tobacco and signs a statement, a copy of which will be placed on file in the office of the employer, that he/she has read the regulation and applicable state laws.
8. A tobacco sales permit is non-transferable, except a new permit will be issued to a retailer who changes location.
9. Issuance of a tobacco sales permit shall be conditioned on an applicant's consent to unannounced, periodic inspections of his/her retail establishment to ensure compliance with this regulation.

F. Free Distribution:

No person shall distribute, or cause to be distributed, any free samples of tobacco products.

G. Out-of-Package Sales:

No person may sell or cause to be sold or distribute or cause to be distributed, any cigarette package that contains fewer than twenty (20) cigarettes, including single cigarettes.

H. Self Service Displays:

All self service displays of tobacco products are prohibited. All humidors including, but not limited to, walk-in humidors must be locked.

I. Tobacco Vending Machines:

All tobacco vending machines are prohibited.

J. Violations:

1. It shall be the responsibility of the permit holder and/or his or her business agent to ensure compliance with all sections of this regulation pertaining to his or her distribution of tobacco.

For Violations of Section D1:

- a. In the case of a first violation, a written warning .
- b. In the case of a second violation within an eighteen (18) month period of the date of the current violation, a fine of one hundred dollars (\$100.00) and the tobacco sales permit shall be suspended for seven (7) consecutive business days.

c. In the case of a third violation within an eighteen (18) month period, a fine of two hundred dollars (\$200.00) and the tobacco sales permit shall be suspended for thirty (30) consecutive business days.

d. In the case of a fourth and subsequent violations within an eighteen (18) month period, a fine of three hundred dollars (\$300.00) and the tobacco sales permit shall be suspended for 1 year, 365 consecutive business days.

All tobacco products shall be removed from public view for any seven (7) day tobacco sales permit suspensions. All tobacco products shall be removed from the premises for any 30 day or more tobacco sales permit suspensions. Failure to remove all tobacco products shall constitute a separate violation of this regulation.

Any permit holder who does not comply with any other part of this regulation shall be subject to a fine of one hundred (\$100.00) for each violation within an eighteen (18) month period.

2. Refusal to cooperate with inspections pursuant to this regulation shall result in the suspension of the tobacco sales permit for thirty (30) consecutive business days.

3. In addition to the monetary fines set above, any permit holder who engages in the sale or distribution of tobacco products directly to a consumer while his or her permit is suspended shall be subject to the suspension of all board of health issued permits for thirty (30) consecutive business days.

4. The **Ashburnham** Board of Health shall provide a violation notice of suspension of the tobacco sales permit to the permit holder. If the permit holder or its business agent is aggrieved by a decision of any agent or employee of the Board or to whom a violation notice or order has been served may petition for a hearing before the Board. Such a petition must be filed in writing at the main office of the Board within seven (7) days after the violation notice or order was served. Within ten (10) days of receiving a petition, the Board shall inform the petitioner of the date, time, and place of the hearing and their right to inspect and copy any records that the Board might have concerning the matter to be heard. If the permit holder or its business agent petitions for a hearing, the suspension issued will be temporarily sustained until the outcome of the hearing has been determined. After the hearing, the Board may affirm or reverse the decision of the agent or employee in whole or part. The decision shall be in writing and shall state the facts on which it is based. Any person aggrieved by the final decision of the Board with respect to any order issued under the provisions of these regulations may seek relief in a court of competent jurisdiction in the Commonwealth.

5. Any permit holder who does not pay the assessed fine within twenty-one days from fine issuance may be subject to criminal proceedings.

K. Non-Criminal Disposition:

Whoever violates any provision of this regulation may be penalized by the non-criminal method of disposition as provided in General Laws, Chapter 40, Section 21 D or by filing a criminal complaint at the appropriate venue. Any fines imposed under the provisions of this regulation

shall insure the Town of Ashburnham until such time the Ashburnham Board of Health is authorized to collect such fines. Thereafter the fines shall insure to the Ashburnham Board of Health,

Each day any violation exists shall be deemed to be a separate offense.

L. Enforcement:

Enforcement of this regulation shall be by the Board of Health of **Ashburnham** or its designated agent(s).

Any citizen who desires to register a complaint pursuant to the regulation may do so by contacting the Board of Health of **Ashburnham** or its designated agent(s) and the Board shall investigate.

M: Severability:

If any provision of these regulations is declared invalid or unenforceable, the other provisions shall not be affected thereby but shall continue in full force and effect.

N. Effective Date:

These regulations were revised and passed on April 7, 2008.

These regulations go into effect on May 1, 2008.

Glen Hathaway, Chair

Scott Sibley

Patrick Durkee

John McLaughlin

Thomas Flanagan